The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Ex parte CLAY T. WHITEHEAD

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Application No. 09/863,010

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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MAILED

JUL 06 2006

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

This application was electronically received at the Board of Patent Appeals and Interferences on June 5, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

A review of the file indicates that on March 21, 2006, the Examiner mailed an Examiner's Answer. The "Evidence Relied Upon" section states "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal." However, the examiner's answer relies on U.S. Patent Publication 2001/0014868 to Herz et al. As

stated in the Manual of Patent Examining Procedure § 1207.02 Rev. 3 (August. 2005)

"Contents of Examiner's Answer:"

> (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Accordingly, it is

**ORDERED** that the application is returned to the examiner to:

1) vacate the Examiner's Answer mailed March 21, 2006, and issue a revised Examiner's Answer correcting the information for heading "Evidence Relied Upon" section;

2) have a complete copy of the revised Examiner's Answer scanned into the record; and

3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

Dale M. Shaw
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DMS/cam

Application No. 09/863,010

cc:

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